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In the Supreme Court of the United States

OCTOBER TERM, ~~1963~~ 1964

No. [redacted] 18

WILLIAM BECK,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

BRIEF OF PETITIONER.

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In the Supreme Court of the United States

OCTOBER TERM, 1963.

No. 696.

WILLIAM BECK,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

BRIEF OF PETITIONER.

STATEMENT OF CASE.

I.

William Beck, the Petitioner, was charged and convicted of a violation of Revised Code of Ohio, § 2915.111, wherein it was charged that on the 10th day of November, 1961, he had in his possession or under his control, certain illegal gambling slips. Prior to trial the Petitioner moved to suppress certain evidence, which evidence, it was alleged, had been seized in violation of the constitutional prohibition against illegal searches and seizures. Also, it was contended that the use of such evidence seized in violation of the constitution "is by that same authority inadmissible in a state court." This Motion, following a hearing, was denied and on the merits the original judgment herein being challenged was rendered. Petitioner was then sentenced.

In due season, Petitioner appealed this cause: first, to the Ohio Court of Appeals, which routinely affirmed this judgment without any discussion. Next, upon its consideration on the merits, the Supreme Court of Ohio affirmed the judgment of the Court of Appeals. The opinion of the Supreme Court of Ohio is reported, *State v. Beck*, 175 Ohio St. 73 (1963).

The transcript of Record, hereinafter referred to as (R.), shows as follows:

To support the allegations made in the written Motion to Suppress (R. 3), the defense gave evidence through Sergeant Carl Delau, one of the arresting officers. This officer testified that he was a member of the Cleveland Police Department and that at about 1:00 o'clock p. m., on the 10th day of November, 1961, while in the company of several other officers, they stopped Beck shortly after he had turned east from East 115th Street onto Beulah Avenue. The Sergeant further related that they (the officers) did not stop him for any traffic offense. As the Sergeant phrased it, "I identified myself and requested him to pull over to the curb" (R. 6). Further testimony was in response to these direct questions:

> "Q. Then you searched his automobile.
> A. Yes, I did.
> Q. Prior to that, did you indicate to him that he was under arrest?
> A. Not while searching the automobile" (R. 6).

The search conducted of Petitioner and his car at that time was not productive of any contraband or the fruits of illegality. However, despite this abortive exploratory search, William Beck was placed under arrest. In this regard the following excerpt of testimony is significant:

"Q. Why then did you place him under arrest?

A. I placed him under arrest for a clearinghouse operation, scheme of chance.

Q. At that time, you had discovered some evidence of a scheme of chance?

A. I did not.

Q. At the time you placed him under arrest, you did not have any evidence?

A. Other than information.

Q. In other words, you heard rumors?

A. I heard reports and found that he has a record in connection with clearinghouse and scheme of chance.

Q. Previous convictions?

A. Yes.

Q. On this information, you arrested him on the City streets?

A. On Beulah Avenue.

Q. And you searched the automobile?

A. Yes.

Q. Did you find anything as a result of that search?

A. No.

Q. Then what did you do?

A. I conveyed him to the Fifth District, where we searched him.

Q. In other words, you didn't find anything as a result of your search of the automobile?

A. That is correct.

Q. Then he was transported to the Fifth District Station, which is on Chester Avenue?

A. 107th and Chester.

Q. At 107th and Chester, you then searched Mr. Beck?

A. I did.

Q. Prior to your searching of Mr. Beck, he was under arrest?

A. Yes, he was" (R. 5-6).

II.

Suffice it to say, their search of William Beck at the District Station revealed, secreted in his clothes, the illegal clearinghouse number slips.

With regard to the officer's testimony that he had "information," he was specifically asked: "from whom did you get this information?" The response was "I couldn't divulge this information" (R. 10). Counsel for the Petitioner then made an appropriate argument for the disclosure of the sought for information.

The Court after first reserving its ruling on this request that the Court order the witness to answer the question, ruled: "I am not going to order the patrolman to testify as to the name of the informer on the grounds of irrelevancy" (R. 11).

Concerning this latter ruling by the Court, it followed this specific question by the Court:

> "The Court: I have a question, Officer. When you placed this man under arrest did you place him under arrest for a felony or a belief that a felony had been committed?
>
> The Witness: Under a belief that a felony had been committed, under State law, carrying on a scheme of chance is a felony, on that basis, I arrested him" (R. 11).

III.

In its opinion the Supreme Court of Ohio ruled, in effect, that in moving to suppress unconstitutionally seized evidence, an accused is not making a defense against the charge lodged against him. Thus that Court held:

> "It is not reversible error on the part of a trial court to refuse to order the disclosure of the identity of an informer, whose information led in part to the apprehension and arrest of an accused person, where such

> disclosure would not be helpful and beneficial to the accused in making a defense to a criminal charge lodged against him." *State v. Beck*, 175 Ohio St. 73 (1963), (R. 15).

As regards the existence of probable cause for an arrest without a warrant (and presumably for the issuance of a warrant), according to the challenged authority of this opinion, the police in Ohio are to be delegated the power to justify, with impunity, their own illegal acts by resort even to a fictional or phantom informer as the supplier of requisite probable cause. This is so because, under the announced Ohio Rule, the mere statement by an officer that such informer exists or gave reliable information is not subject to dispute. Not only this, but such statement is entitled to be viewed, as was done by the Supreme Court of Ohio, as conclusive on the question of: the honesty of the belief of the arresting officer; the reliability of his "informer"; the reasonableness of his reliance on the information supposedly supplied; the existence of probable cause and their right to arrest without a warrant.

Consider in this latter regard, the following holding by the Supreme Court of Ohio in their disposition of this appeal:

> "All searches and seizures without warrants are not prohibited by law. The search of an individual's person on the honest belief of an arresting officer, based upon probable cause that a felony has been committed, does not constitute an unlawful search, and incriminating articles seized during the search may properly be received in evidence against the individual at his trial for having in his possession such articles" (Id., 175 Ohio St., at 73), (R. 15).

The dissenting opinion took the position, consistent with numerous pronouncements from this Court that the validity of the search and seizure without a warrant after

an arrest is dependent upon the arrest being valid. (Id., 175 Ohio St., at 78), (R. 21). Also, it was cogently argued by the dissentors, that: the officer's "conclusion as to whether he was arresting defendant for a felony is not determinative. Mere honesty and good faith on the part of the arresting officer is not enough. There must also be reasonable grounds for believing that the person arrested has committed an act constituting a felony." (Ibid.)

SUMMARY OF ARGUMENT.

With *Mapp v. Ohio*, 367 U. S. 643 (1961), constitutional efficacy and enforcement was given to the exclusionary rule. *Ker v. California*, 371 U. S. 33 (1963), resolved the issue as to the proper standards to be applied in gauging the recurring problems involved in the frequent challenges now, more than ever before in history, being made against the conduct of enforcement officers.

In all probability it was envisioned by this Court that there would be some resistance to the full impact of these cases. And it is probably true that in no other State has the resistance to these doctrines been more pronounced than it is in Ohio, where most of these cases are disposed of by resort to the fiction of "harmless error" facilitated by means of an omnium-gatherum entry to the effect that: "the Court finds no error prejudicial to the appellant." (See, R. 13.)

The effect of this type of judgment entry, dispositive of appeals raising numerous and complicated questions in the area of searches and seizures, is that on the local level there are in most areas precedent voids. In addition to this, in the very few cases where opinions are reported the cases have been wrongly decided (See, e. g. *State v. Young*, 185 N. E. 2d 33 [Ct. of App., 1962]), or so general as to be ab-

solutely worthless as a precedential authority. (See, *State v. Coleman*, 186 N. E. 2d 93 [Ct. of App., 1962].)

In this cause, it is our contention that:

1. Probable cause for an arrest without a warrant is not established, at hearing on a Motion to Suppress evidence, by a policeman's testimony that he received a tip from an unnamed and unidentified informer when the defense's motion for disclosure is denied.

2. A State cannot, consistent with the constitution, refuse to require the disclosure of an alleged informer where the existence of probable cause is predicated on information supposedly supplied by such informer.

3. In making the substantive determination of the reasonableness of a warrantless arrest or search, a state court cannot arbitrarily accept as conclusive the testimony and subjective judgment of police officers on the issue of the existence and reliability of an unnamed and unidentified informer.

4. Even where there has been a lawful arrest the incidental search of the person of the accused without a warrant is limited to safeguarding the arrest and the arresting officer.

5. A crime is not committed in the presence of an officer, so as to justify an arrest without a warrant, when the gravamen of such offense is the possession of contraband, knowledge of which was not available to the officer prior to the search.

6. Where there is time to procure an arrest or search warrant, any warrantless arrest and search is "unreasonable" so as to constitute a violation of the Fourth and the Fourteenth Amendments.

ARGUMENT.

The threshold question raised by Petitioner's Motion to Suppress was essentially this: was the arrest of the Petitioner and the search of his person legal? If in fact the evidence sought to be suppressed by the Motion was obtained as a product of an illegal search and seizure, it is not admissible over objections, by reason of the constitutional guarantees against illegal searches and seizures (invasion of privacy) and/or against self incrimination. *Mapp v. Ohio,* 367 U. S. 643 (1961).

In resolving the question of legality we start with the premise that: The Fourth Amendment to the United States Constitution does not permit the stopping of an individual operating a motor vehicle on a public street, detention of said individual, search of the vehicle, physical deprivation of liberty without probable cause. *Henry v. United States,* 361 U. S. 98 (1959). And facts developed after the arrest of an individual will not justify or give validity to the act of arresting, this is so even when the items discovered prove to be of a contraband nature. *United States v. Jeffers,* 342 U. S. 49 (1951). A search is reasonable as an incident to an arrest only if the arrest is lawful. *United States v. Di Re,* 332 U. S. 581 (1948).

On the other hand, an incidental search is, as the term implies, incident to the arrest. The primary purpose being the arrest with the search purely incidental. An exploratory search, such as was consummated here, is one in which the search is the primary object and the arrest is used as pretext to justify the search. *Worthington v. United States,* 166 F. 2d 557, 566 (6th Cir. 1948); *Henderson v. United States,* 12 F. 2d 528 (4th Cir. 1926). In these cases, the search is exploratory and for that reason "unreasonable," and being unreasonable is absolutely prohibited by the constitution.

In this cause the officer merely claimed that he saw the Petitioner in a certain vicinity and arrested him on sight for, as he stated, a felony. Why this was an obvious tactic, cleverly designed to circumvent the law, will be easily exposed by the objective consideration surely to be given our cause.

It is our contention, despite testimony of the officer that the arrest followed the search of the car, that the arrest occurred at the point the police "stopped the car." *Henry v. United States, supra,* at 103. Now, the significance of the moment of arrest is based on the principles of the Fourth Amendment, which define the rights of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizure. The search of Beck was ruled by the Trial Judge to be incident to this arrest (R. 12). The essential question then is: Did probable cause exist for the arrest of William Beck without a warrant?

The undisputed evidence was that the detectives curbed Beck's car and immediately commenced to search it, later taking him to the station where a more thorough search of his person was conducted which disclosed the contraband. If the arrest was not proper, the subsequent finding of this evidence could not make it good. Surely, the officer is not to be permitted to justify the search by the arrest. This "boot-strap" argument has been expressly condemned. See, *McDonald v. United States,* 335 U. S. 451 (1948).; *Johnson v. United States,* 333 U. S. 10, 16-17 (1947).

Also, and most assuredly, the detectives in calling upon Beck to stop did so by virtue of their official position. This compulsion exercised by the officers then and there, in depriving him of his freedom of proceeding along a public street, constituted an arrest. Again, if prob-

able cause did not exist prior to finding the illegal slips, the search cannot be sanctioned; notwithstanding, the contrary view expressed by the Supreme Court of Ohio below.

WHERE AN ARREST IS NOT EXPRESSLY SANCTIONED BY STATUTE, THE ARREST IS UNLAWFUL AND THE INCIDENTAL SEARCH UNREASONABLE.

With a valid warrant, a police officer can arrest for a felony or a misdemeanor. It makes no difference whether or not the crime is committed in his presence. Probable cause in such instance is predetermined or at least should have been. Article IV, U. S. Constitution; R. C. of Ohio, § 2933.22. Cf., *Aguilar v. Texas*, 32 USLW 4499 (1964) and *Giordenello v. United States*, 357 U. S. 480 (1958).

The method and time of executing an arrest warrant are set forth in our statute (R. C. of Ohio, § 2935.12), compliance with which is mandatory. On the other hand, many incidental searches, in all other respects reasonable, have been held "unlawful" for failure to comply with the provisions concerning notification to arrestee of purpose and authority. *Miller v. United States*, 357 U. S. 301 (1958); *Keiningham v. United States*, 287 F. 2d 126 (1960); *Accarino v. United States*, 179 F. 2d 456 (1949).

In Ohio, as elsewhere, a police officer may arrest for any crime, felony or misdemeanor committed in his presence. Cf., e.g., Revised Code of Ohio, § 2935.03 and 18 U. S. C. A., § 3052 (Supp. 1963). This right to arrest for a crime not committed in the presence of the police officer is strictly limited for the protection of the public. Thus, a police officer may never arrest for a misdemeanor not committed in his presence. Such an arrest is invalid as is the search incidental thereto.

Our statutes in Ohio also specify when and how a

warrantless arrest may be made for crimes not committed in view of an officer. Accordingly, Revised Code of Ohio, § 2935.04, provides, in substance, that: when a felony has been committed, or there is reasonable grounds to believe that a felony has been committed, any person without a warrant may arrest another whom he has reasonable cause to believe is guilty of such offense, and detain him until a warrant can be obtained. 5 *Ohio Jur.* (2d), Arrest, § 25, pp. 38-39.

To sum up, if the crime is committed in the presence of the police officer he may arrest without a warrant for felonies or misdemeanors. When not committed in his presence, he may make such arrest only if he has probable cause to believe a felony has been committed and probable cause to believe the person arrested committed it. If the arrest is not expressly sanctioned by statutes, the arrest is unlawful and as a consequence the incidental search unreasonable.

Not only this but, basically the concept is that no search can ever be made without a search warrant. The only exception, other than waiver or consent, is search incident to a lawful arrest. In this regard even probable cause for making a search cannot justify the officer making such search without a warrant. *Jones v. United States*, 357 U. S. 493, 497-498 (1958); *Agnello v. United States*, 269 U. S. 20 (1925). Hence another query must be: did the officer possess sufficient information as would have justified the issuance of an arrest warrant, because "[w]hether or not the requirements of reliability and particularity of the information on which an officer may act are more stringent where an arrest warrant is absent, they surely cannot be less stringent than where an arrest warrant is obtained. Otherwise, a principal incentive now existing for the procurement of arrest warrants would be

destroyed." *Wong Sun v. United States*, 371 U. S. 471, 479 (1963).

Next, these statutes also provide that persons arrested without a warrant shall be informed of the cause of their arrest. Revised Code of Ohio, § 2935.07. Cf., *Miller v. United States, supra*. Suffice it to say there is little uncertainty, at least, in this area of the substantive law of searches and seizures. There must be probable cause to make the arrest and there must be a statutory right to arrest. Compliance with these statutes is mandatory and if the arrest is unlawful, the incidental search is unreasonable and the product of such search is not admissible in evidence to convict. *Mapp v. Ohio, supra*, at 355.

Based on these principles alone, it is apparent that the arrest of this Petitioner cannot pass muster. First, there was no probable cause for the arrest. Next, no crime was committed in the presence of the officer and there was not reasonable ground to believe the felony particularized (and any other felony) was involved. Further, Beck was not informed of the cause of his arrest. Not only this but if this search, conducted under such a frame of reference, is not proper to be designated exploratory, it would be most difficult to even hypothesize a suitable fact situation for purposes of illustration.

A SEARCH WHICH IS UNREASONABLE FOR A WANT OF PROBABLE CAUSE CANNOT BE MADE REASONABLE BY WHAT THE SEARCH UNCOVERS.

Perhaps the greatest source of difficulty in this whole area of searches and seizures involves a search made without a warrant and, as was done here, pursuant to an arrest without an arrest warrant. Such an arrest is valid (if it is, so is the ensuing search) if it is for a misdemeanor committed in the officer's presence, or when based upon

the reasonable grounds relative to a felony—as argued above. Cf., *Draper v. United States*, 358 U. S. 307 (1959).

Our problem, however, has to a degree been delimited by the arresting officer's conclusion, adopted by the Supreme Court of Ohio in its opinion, that the arrest of Beck was for a "felony" which the officer stated he believed had been committed by William Beck. *State v. Beck*, 175 Ohio St., at 75, (R. 17).

Concededly, it is unnecessary to have evidence sufficient to convict in order to have probable cause for search, seizure or arrest. *Carroll v. United States*, 267 U. S. 132, 161-162 (1955). Again, the crucial inquiry is whether there was probable cause to believe the "felony" referred to by the officer had been committed. See, dissenting opinion, *State v. Beck*, 175 Ohio St., at 81, (R. 23-24).

A. When the Identity and Existence of an Allegedly Reliable Informer Is Material to the Establishment of Probable Cause, the Court Must Require Disclosure.

Sergeant Delau (the arresting officer) in his evidence attempted to justify his actions on the basis of "confidential information" that had allegedly been given him (R. 6, 12). Now, the rule that an informer's tip may supply "probable cause" for an arrest or search must be regarded as subject to numerous exceptions and qualification. *Jones v. United States*, 362 U. S. 257 (1960); *Draper v. United States, supra*. The narrow purview of our discussion at this juncture is concerned not only with the propriety of the Trial Judge's ruling against disclosure, but also the announced view of the Supreme Court of Ohio which is in obvious conflict with the supreme law of the land as enunciated by this Court.

At the outset, it should be understood that Ohio does

not have a statutory privilege of confidentiality as between the policeman and an informer. Revised Code of Ohio, § 2317.02. Moreover, the Supreme Court of Ohio has expressly held that "* * * a privilege against testifying or producing evidence must rest upon some statutory or constitutional provision." *In Re Story*, 159 Ohio St. 144, 147 (1953). It would thus seem to follow from a bare reading of this privilege statute, which does not confer any status to the policeman-informer relation, that the mere invocation of the doctrine of "expressio unius est exclusio alterius" should have been determinative.

Be that as it may, even in jurisdictions where the privilege exists, the disclosure of the identity is required in order to allow a challenge to the validity of an arrest or the propriety of the issuance of a warrant. This limitation on the applicability of the privilege arises from the fundamental requirements of due process. The problem has been said to involve the balancing of the public interest, in protecting the flow of information, against the individual's rights to have the issues raised by his defense properly determined. *Roviaro v. United States*, 353 U. S. 53, 62 (1957). Also, see, *King v. United States*, 282 F. 2d 392 (4th Cir. 1960); *Anderson v. United States*, 266 F. 2d 924 (D. C. Cir. 1959).

The constitutions of both the State and Federal Government prohibit the issuance of warrants except upon "probable cause." This thought is also memorialized by statute in Ohio's Revised Code, § 2933.22. In this regard, one of the prime issues raised by our Motion was the alleged nonexistence of probable cause. Certainly in this posture, the reliability of the informant, the credibility of the police officer who acted upon the information disclosed, and the soundness of the reason for reliance upon the information are proper matters for exploration by the de-

fense. Thus an accused is entitled to know the identity of the informer, to compel his testimony and then impeach his credibility. *Roviaro v. United States*, 353 U. S. 53 (1957).

Moreover, where a determination of the lawfulness of a search and seizure depends upon the disclosure of the identity of the individual who allegedly gave information which led to the search and seizure, failure to require such person's identity disclosed should render the search unlawful and require that evidence obtained from the search and seizure be excluded. See, *United States v. Blich*, 45 F. 2d 627 (D. C., Wyo., 1932), where the District Court ruled that the existence of probable cause could only be properly determined if the identity of the informer were disclosed.

Whether or not the arrest being assailed in this cause was legally done, to be sure, depends upon a determination as to whether or not the Ohio Courts applied the federal constitutional standards required by this Court's opinion in *Ker v. California*, 374 U. S. 23 (1963). The exact nature of these standards presents a judicial question. And although police officers often feel they have a well-grounded suspicion of a certain person's activities, the test as to whether or not any person's right to privacy can be traversed is of no mean significance. History has of course demonstrated that the zeal of our police, in the great State of Ohio, does not always conform to federal constitutional standards. *Mapp v. Ohio, supra, Haley v. Ohio*, 332 U. S. 596 (1958).

The word of an informer can supply "probable cause" for an arrest or search in certain qualified instances. The test, presently stated by this Court in *Draper v. United States*, 358 U. S. 307 (1959), seems to support the view that what is observed must jibe with what an informer

told him would occur. Further, the informer must be reliable; in that, "an uncorroborated tip by an informer whose identity and reliability are both unknown does not constitute probable cause." *Contee v. United States,* 215 F. 2d 324, 327 (1954). Cf., *Worthington v. United States,* 166 F. 2d 557, 563 (1948), where the Court ruled:

> "In this case, the officers assumed that some denizen of the underworld was betraying appellant. They did not know who the enemy was, but they decided they would act on the anonymous information given, and that they would arrest appellant and search her home if they found nothing, it was probably assumed that appellant did not have enough standing in her community to question their unlawful conduct."

By the Court not requiring disclosure the status of this alleged confidential source became reduced to an anonymity. Certainly if identity were disclosed the defense could have explored the reliability of the informer, produced evidence to rebut any such showing as well as further show that reasonable grounds for reliance did not exist. *Wong Sun v. United States,* 371 U. S. 471, 479-484 (1963). Further, it is just as important to a defendant to have access to a material witness who may satisfy the Court that evidence against him should be excluded, because obtained by unconstitutional means, as to have access to a material witness who may give evidence which will overcome in the eyes of a jury, for example, prosecution evidence against him on the merits of the charge. *People v. Robinson,* 166 Cal. App. 416 (1958).

In the final analysis, the conviction herein being challenged must stand or fall on the determination whether there was probable cause for the arrest, which in turn depends upon not only the existence of an informer but his reliability. By denying the request for disclosure the

right to test the reasonableness of the officer's conduct (including but not limited to the reasonableness of his reliance on such informer) was thereby frustrated. The real fault characteristic, in addition to foreclosing even the possibility of a rational appraisal by the Court, is that such procedure permits the policemen to conclusively determine the validity of his own arrest. Why such an approach is not consistent with the constitutional standards developed by this Court is obvious.

In our view the cogent arguments in favor of disclosure are most compelling. Consider, in this regard, the view expressed in *Jones v. United States*, 271 F. 2d 494, 499 (D. C. Cir. 1959) where the rule was stated:

> "To give vitality to the requirement of reliability the law requires, if no probable cause exists without the information from the informer, that his identity be divulged, so that his reliability may be subjected to a meaningful judicial scrutiny rather than accepted on a policeman's word."

Likewise, in *Priestly v. Superior Court*, 50 Cal. 2d 812, 818 (1958), the California Supreme Court similarly ruled:

> "If an officer were allowed to establish unimpeachably the lawfulness of a search merely by testifying that he received justifying information from a reliable person whose identity cannot be revealed, he could become the sole judge of what is probable cause to make the search. Such a holding would destroy the exclusionary rule. Only by requiring disclosure and giving the defendant an opportunity to present contrary or impeaching evidence as to the truth of the officer's testimony and the reasonableness of his reliance on the informer can the court make a fair determination of the issue."

B. Probable Cause to Arrest Without a Warrant Is a Judicial Question of Fact and Exists Only When the Circumstances Justify the Reasonable Belief That a Felony Has Been or Was Being Committed.

I.

Even if we assume that the Ohio Courts were correct in their rulings denying disclosure, and with this "so called informer" remaining anonymous, if he does exist; still, the evidence discloses nothing to justify the original arrest. Moreover, even following the search of Beck's person, which proved fruitful, the ultimate charge lodged against him was a misdemeanor (that is, a charge based on simple possession of the contraband slips, Revised Code of Ohio § 2915.111). This charge is distinguishable from the felony charge for which the officer testified he arrested the Petitioner; i.e., Carrying on a Scheme of Chance. Revised Code of Ohio, § 2915.13.

II.

The most often quoted statement in the argument against the quest for suppression of evidence is that the constitution does not prohibit all searches, only those that are unreasonable. And although it is only on the rarest of occasions that the State Court Prosecutors will not try to justify even obviously illegal police intrusion on the rights of an accused, the law is that State Courts are required to use the proper standards of reasonableness. See, *Ker v. California, supra,* at page 33.

In determining the issue of reasonableness, where as here, the facts and circumstances established that there was sufficient opportunity to obtain a warrant, can there be any question but that a failure to do so will render an ensuing search unreasonable. *Jones v. United States,* 357

U. S. 493, 499-500 (1958). A limited exception to this rule is operative where exigent circumstances justify an officer proceeding without the warrant. *Johnson v. United States*, 333 U. S. 10 (1947).

Here, however, the officer categorically stated that when he left the police station, on the day of Beck's arrest, he intended to arrest him and was later in the vicinity for that purpose. Stated simply, these officers knew in advance that they were going to arrest Beck, at least the Sergeant so testified. (R. 9.) What excuse then could justify their failure to obtain an arrest warrant; provided, they could qualify for one. Surely if they could not so qualify, they should not have made the arrest and/or search. However, the fact that they did not even seek a warrant must give rise to the cogent inference that their reason for not doing so was because they knew that on the sparse facts available to them, if they had any, no "neutral and detached magistrate" would have issued an arrest warrant based on the felony (R. C. of Ohio, § 2915.13) for which the officer testified he was arresting the petitioner.

In this regard, it is also our contention that this failure to even seek a warrant is most significant. This is so when viewed not only from the posture that the officers could not qualify for the issuance of one, but also, when considering these facts and circumstances as just another example of law enforcement by the Cleveland Police in general and Sergeant (now Lieutenant) Delau in particular. See concurring opinion of Mr. Justice Douglas in *Mapp v. Ohio*, 367 U. S. 643, at page 671, where it was stated, and rightly so, that the facts of *Mapp* show as would few other cases: "the casual arrogance of those who have untrammelled power * * *."

It may be enough to say that this same officer was the

prime arresting officer in the *Mapp* case, and the conduct described in that case, as having been in defiance of the law, was and is typical of the Cleveland Police Department, which continues to defy the power of this Court to restore to the citizens of Ohio their Constitutional guarantee against illegal searches and seizures.

CONCLUSION.

Admittedly, this Court in *Rugendorf v. United States*, 376 U. S. 528, 533 (1964), ruled that disclosure of the identity of an alleged informer was not required where a proper criteria necessitating such disclosure, with reference to the merits of that case, was not made. However, even in *Rugendorf*, it was recognized that (as was stated in *Jones v. United States*, 362 U. S. 257, 271 [1960]), there must be "a substantial basis for crediting the hearsay," and that, "the necessity for disclosure depends upon 'the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors.' " 376 U. S., at 534-535.

In this cause no such basis for crediting the hearsay existed. Further the fact that no other support for the arrest was offered; that is, other than the unbolstered word of an alleged informer, it is more than reasonable to suppose that if the officer did have any information, it was general and of an unspecified nature. Also, and as such, was not capable of providing a proper foundation as to justify a warrantless arrest.

Surely, by denying disclosure here, as to this Petitioner, the prohibition against illegal searches and seizure will have been emasculated. And the policeman, in spite of the constitution, will have very probably justified his arrest by the search.

Moreover, upon an objective analysis of this cause, we are left with an arrest without probable cause and without a warrant. In addition we have the brazen failure by the police to submit to any magistrate, for a proper determination of the question of the sufficiency of the "facts" within their knowledge, and of which they assertedly had reasonable and trustworthy information. All of which, the officer claimed, constituted the predicate for his belief that the arrest of the Petitioner (Beck) was properly indicated for the stated felony.

Also, and as a direct consequence of the Ohio Court's apparent unwillingness to vindicate those rights restored to Ohio citizens by *Mapp*, there is this revolutionary Ohio rule announced by our Supreme Court below; the effect of which is that: the testimony of police officers as to the existence of probable cause, and the reliability of an informant is not only conclusive but determinative of those issues.

There is thus evolved, the substantial query as to whether or not this Court can agree, with the Supreme Court of Ohio, that it takes less evidence in our state to arrest without a warrant than it apparently takes to get one. See, *City of Akron v. Williams*, 175 Ohio St. 186 (1963), and *State v. Watson*, 177 Ohio App. 333 (1962).

It is, to be sure, our view that this Court will not hesitate to vindicate the rights involved herein, that the Court will rule in favor of all the contentions being urged by the Petitioner. Also, that this Court will again declare that the limitation upon arrest and the introduction of illegally seized evidence will not be given grudging applications. Not only this, but such applications will be, "respected only insofar as consistent with federal constitutional guarantees." *Ker v. California, supra*, at 33.

Most earnestly, and for the reasons herein given, petitioner respectfully submits that the judgment of the Supreme Court of Ohio should be reversed.

Respectfully submitted,

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